IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN P. MORRIS and JOSHUA JOHNSON,	:	
Plaintiffs,	:	CIVIL ACTION
v.	:	No. 01-3420
JAMES P. HOFFA and THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS,	:	
Defendants.	:	

MEMORANDUM/ORDER

GREEN, S.J. **APRIL _____, 2002**

Presently before the Court are Defendants' Motion to Dismiss pursuant to Rule 12(c), Plaintiffs' Response, Defendants' Reply and Plaintiffs' Sur-reply[1]. For the following reasons, Defendants' motion will be granted.

I. Factual and Procedural Background

John P. Morris and Joshua Johnson ("Plaintiffs") allege that, in November and December of 1999, James P. Hoffa and the International Brotherhood of Teamsters ("Defendants") intentionally and maliciously defamed them.[2] The defamatory statements were issued in a November, 1999 "Notice" issued by Defendants to the officers and members of Local 115 of the International Brotherhood of Teamsters in Philadelphia ("IBT"). In addition to the statements made in that "Notice," Plaintiffs allege that Defendants issued a press release containing similar,

[1] Plaintiffs filed a Memorandum of Law in Opposition to Defendants' Motion for Leave to File a Reply Brief. I granted Defendants' motion to file a reply brief, and their Reply has been docketed. However, since Plaintiffs did make specific legal arguments in answer to Defendants' Reply brief, I have accepted their Memorandum of Law in Opposition to Defendants' Motion for Leave to File a Reply Brief (Docket # 16) as their Sur-reply to the instant motion, and have taken it into account in my consideration of this matter.

[2] Unless otherwise noted, all facts have been taken from Plaintiffs' Complaint.

defamatory material, and that Defendants conspired with as-yet-unknown individuals to plant an article containing false and untruthful material in the December 6, 1999 issue of *Time* magazine. In the "next twelve months the [defamatory statements] were repeated approximately fourteen times by Defendants and published on the IBT web site." (See Complt. ¶ 12.)

In November, 2000, Plaintiffs, without assistance of counsel, initiated an action in the Court of Common Pleas of Philadelphia County with the filing of a Praecipe to Issue Writ of Summons. That matter is still pending in the state court.[3] After retaining counsel, Plaintiffs filed the instant action in July 2001, citing this Court's diversity jurisdiction under 28 U.S.C. § 1332, and alleging the facts necessary to satisfy the jurisdictional requirements.

Defendants filed an Answer to the Complaint, and now move pursuant to Federal Rule of Civil Procedure 12(c) for Judgment on the Pleadings. Defendants allege that Plaintiffs' action is barred by the statute of limitations applicable to defamation cases. Plaintiffs argue that the filing of the Praecipe to Issue Writ of Summons in the state court tolled the limitations period and that because the state court action was timely, the instant action must be considered timely as well.

II. Legal Standard

When considering a motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c), the Court "must consider as true any well-pleaded factual allegations in the pleadings, [ ] must draw any permissible inferences from those facts in the non-moving party's favor, and [ ]

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[3] Because neither party has specifically stated otherwise, I will assume that the Praecipe to Issue Writ of Summons is the only filing in the state-court action. Furthermore, drawing all assumptions in a light most favorable to the Plaintiff, I will accept the statement in their Sur-reply that, in this action, they pursue the very claim which was the subject of the writ of summons. (See Pltfs.' Sur-reply at 2-3.) Therefore, for the purposes of this motion, the Court will assume that the subject matter of the state-court action is the same as the subject matter of this federal action.

may grant the defendants' motion only when the plaintiff has alleged no set of facts which, if subsequently proved, would entitle her to relief." DeBraun v. Meissner, 958 F. Supp. 227, 229 (E.D. Pa. 1997) (citing Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)). "Under Rule 12(c), a district court cannot grant judgment on the pleadings . . . unless the movant clearly establishes that no material issue of fact remains to be resolved and that he is entitled to judgment as a matter of law." CoreStates Bank, N.A. v. Huls America, Inc., 176 F.3d 187, 193-94 (3d Cir. 1999) (citations and internal quotations omitted).

"As a basic premise, federal courts sitting in diversity are required to apply the substantive law of the state whose laws govern the action." Robertson v. Allied Signal, Inc., 914 F.2d 360, 378 (3d Cir. 1990). "When ascertaining matters of state law, the decisions of the state's highest court constitute the authoritative source." Connecticut Mutual Life Insurance Co. v. Wyman, 718 F.2d 63, 65 (3d Cir. 1983).

The instant matter is before the Court due to the diversity of the parties, and the Court will apply Pennsylvania law.[4] "As a federal court sitting in diversity, we look to state law to determine when an action is commenced for purposes of the state's statute of limitations."

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[4] Defendants argue that Pennsylvania law applies. (See Dfdts.' Mem. at 3.) While Plaintiffs do not specifically argue that Pennsylvania law does or does not apply, they do rely on Pennsylvania law in their brief. (See Pltfs.' Resp. at 4-9.) Generally, in resolving a claim brought under the Court's diversity jurisdiction, the law to be applied is the law of the forum state. See Erie R.R. Co. v. Tompkins, 304 U.S. 64, 78 (1938); see also Gasperini v. Center for Humanities, Inc., 518 U.S. 415, 417 (1996) (holding that, under Erie doctrine, "federal courts sitting in diversity apply state substantive law and federal procedural law"). Therefore, I will apply Pennsylvania law to examine the matter sub judice. See, also, Marcone v. Penthouse International Magazine for Men, 754 F.2d 1072, 1077 (3d Cir. 1985) (holding that Pennsylvania law applies to defamation actions in which plaintiffs reside in Pennsylvania and any harm to their reputation that may have occurred as a result of the challenged publication is largely centered in Pennsylvania).

Patterson v. American Bosch Corp., 914 F.2d 384, 387 (3d Cir. 1990) (citing Walker v. Armco Steel Corp., 446 U.S. 740, 752-53).

III. Discussion

This case basically comes down to one question: whether the filing of a state court action tolls the statute of limitations for a later-filed and distinct federal action. I conclude it does not.

Under Pennsylvania law, the statute of limitations for a defamation action is one year. See 42 Pa. Cons. Stat. § 5523(1). The statute of limitations begins to run at the time a plaintiff's action accrues, and accrual occurs at the time a plaintiff's right to institute and maintain suit arises. See 42 Pa. Cons. Stat. § 5502(a);see , also, generally, Crouse v. Cyclops Ind., 745 A.2d 606, 611 (Pa. 2000). The cause of action for defamation accrues on the date of publication of the defamatory statements. See, e.g., Barrett v. The Catacombs Press, 64 F. Supp 2d 440, 443 (E.D. Pa. 1999); Merv Swing Agency, Inc. v. Graham Co., 579 F. Supp. 429, 430 (E.D. Pa. 1983). The instant action was filed on July 6, 2001. Therefore, any cause of action which accrued before July 7, 2000 would be barred by this statute of limitations.

"[T]he filing of an action in state court [does not] toll the statute of limitations against a subsequent action filed in federal court." Ravitch v. PriceWaterhouse, No. 373 EDA 2001, 2002 WL 257652 at *3 (Pa. Super. Ct. Feb. 25, 2002) (citing Falsetti v. Local Union No. 2026, United Mine Workers of America, 355 F.2d 658 (3d Cir. 1966) and Royal Globe Insurance Companies v. Hauck Manufacturing Co., 233 A.2d 460, 462 (Pa. Super. Ct. 1975)); see, also, Ammlung v. City of Chester, 494 F.2d 811, 816 (3d Cir. 1974) ("The running of a Pennsylvania statute of limitations against a federal cause of action is not tolled under Pennsylvania concepts of tolling by the commencement of a similar suit in state court.").

While the state of the law on this question appears to be settled, Plaintiffs attempt to distinguish this matter from the aforementioned Third Circuit cases. Plaintiffs argue that both Falsetti and Ammlung involve "at least two distinct and separate claims – a claim for violation of a state right and a claim for violation of a federal right." (See Pltfs.' Sur-reply at 2.) Plaintiffs contend that these cases "hold the filing of a proceeding in state court on the state law claim does not toll the limitations on the federal claim." (See Pltfs.' Sur-reply at 2.) This case is different, they argue, because in the instant matter, Plaintiffs are invoking this Court's diversity jurisdiction and "pursue the very claim which was the subject of the writ of summons." (See Pltfs.' Sur-reply at 2-3.) Plaintiffs conclude by arguing that the filing of the state court action "preserved their claims." (See Pltfs.' Sur-reply at 2-3.)

Plaintiffs' arguments are not persuasive.[5] While the factual distinctions Plaintiffs note between their case and the Third Circuit cases are technically correct, I conclude that they are not enough to dissuade this Court from applying those cases. The filing of the state court action tolled the limitations period for that action alone. If the state court action were properly removed, then the filing of the action in state court would have sufficed to toll the limitations period. See Patterson v. American Bosch Corp., 914 F.2d 384, 386 (3d Cir. 1990) (applying

[5] It should be noted that, if Plaintiffs were able to successfully argue that this case differs from Falsetti and Ammlung on the basis that this federal action has the same factual basis and legal justification as the previously filed state-court action, then the Plaintiffs' instant case may be subject to dismissal under existing abstention doctrines, since the state-court action is still pending, was filed first, was filed by Plaintiffs, state-law issues predominate, and, as Plaintiffs freely and unprovokedly admit, the facts in the state-court action form the exact same factual basis as the instant federal court action. However, since the parties have not briefed this issue, the record is insufficient to make this determination at this time, and the Court declines to draw unsupported suppositions.

Pennsylvania law in a diversity action which was removed to federal court, and holding that the filing of a writ and good-faith attempt to serve the writ tolled the limitations period). However, the state court action is still pending, and cannot be relied on by Plaintiffs in this action. Plaintiffs have not shown – and cannot show – any case which holds that the filing of a state court action tolls the limitation period on state-law claims for all future federal actions. I conclude that the filing of the praecipe to issue a writ of summons in the state court did not toll the limitations period for this federal action, where the state court action has not been removed to this Court, and where Plaintiffs filed a separate action in this federal court based on the same operative facts. Therefore, any cause of action which Plaintiffs seek to pursue in this matter which accrued before July 7, 2000 is barred by Pennsylvania's one year statute of limitations for defamation actions.

This determination does not end the matter, however. In Plaintiffs' Complaint, they allege that Defendants' defamatory remarks were "repeated approximately fourteen times by defendants and published on the IBT web site." (See Complt. ¶ 12.) The instant action was filed on July 6, 2001. I have just concluded that any defamatory remarks published before July 7, 2000, are barred by the one year statute of limitations for defamation actions. However, any defamatory statements made on or after July 7, 2000 would remain actionable, and the filing of this action may have tolled the limitations period on any claims involving those statements.[6] But,

[6] Of course, Plaintiffs must allege – and ultimately be able to prove – that the defamatory statements were issued independent of their original publication. See, e.g., Graham v. Today's Spirit, 468 A.2d 454, 457 (stating that "it is the original printing of the defamatory material and not the circulation of it which results in a cause of action"). While I do not, at this time, decide whether the "publication" of remarks over the Internet is subject to the same rules and precedent as the "publication" of written material in other media controlled by Graham, at the preliminary

since Plaintiff's Complaint is unclear as to the exact dates the defamatory remarks were "repeated," I cannot conclude that they have adequately plead any actionable claims. Plaintiffs' Complaint will be dismissed, but Plaintiffs will be given the opportunity to file an Amended Complaint[7] which definitively sets forth claims which are not time barred.[8]

IV. Conclusion

For the foregoing reasons, I will dismiss Plaintiff's Complaint, as Plaintiffs have failed to sufficiently set forth any claims that are not subject the applicable statute of limitations. Plaintiffs will be given an opportunity to file an Amended Complaint. An appropriate order follows.

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stage Plaintiffs must, at least, set forth the specific publication dates of each defamatory statement for which they seek recovery.

[7] If a district court grants a defendant's motion for judgment on the pleadings, it is within that court's discretion whether to allow a plaintiff to file an amended complaint. See Jablonski v. Pan American World Airways, Inc., 863 F.2d 289, 292 (3d Cir. 1988). Though Plaintiffs have not specifically moved for leave to file an Amended Complaint, I will give the Plaintiffs an opportunity to set forth claims which are legally sufficient and consistent with this memorandum.

[8] Because I am dismissing Plaintiffs' Complaint in its entirety, I need not consider Defendants' argument that Plaintiffs have failed to plead "special harm" from Defendants' allegedly defamatory remarks, as is required under Pennsylvania law. (See Dfdts.' Mem. at 6-7.) It is also unnecessary to consider whether, as Plaintiffs argue, the allegedly defamatory remarks constitute slander per se, which, if proven, may negate the requirement of special damages. (See Pltfs.' Resp. at 8-9.)

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JAMES P. HOFFA and THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS,	:	
Defendants.	:	

ORDER

AND NOW, this _____ day of April, 2002, upon consideration of Defendants' Motion to Dismiss pursuant to Rule 12(c), Plaintiffs' Response, Defendants' Reply and Plaintiffs' Sur-reply, **IT IS HEREBY ORDERED** that:

1) Defendant's motion to dismiss is **GRANTED**;

2) Plaintiffs' Complaint is **DISMISSED, without prejudice to Plaintiffs filing an Amended Complaint by April 29, 2002**, in which Plaintiffs allege facts sufficient to state a cause of action upon which relief may be granted.

BY THE COURT:

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CLIFFORD SCOTT GREEN, S.J.